

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

UNITED STATES OF AMERICA
Plaintiff,

v.

Case No. 09-CR-196

DERRICK AVERY
Defendant.

ORDER

On June 11, 2010, I denied defendant's motions to suppress and dismiss. (R. 103, denying R. 62, 63, 65, 66.) The docket shows that defendant's "Motion to Dismiss Based on Lack of Authority to Investigate" also contains a "Motion to Exclude Based on Lack of Authority to Investigate." (R. 66.) In his objections to the magistrate judge's recommendations, defendant addressed only the motion to dismiss on this basis; he did not separately address the request to exclude.¹ (R. 74 at 13-15.) Therefore, I consider the request for exclusion waived. See Fed. R. Crim. P. 59(b)(2).

In any event, the motion fails on the merits. First, as with the motion to dismiss, defendant has provided no authority for excluding evidence gathered by the IRS agent, and I have found none. Cf. United States v. Caceres, 440 U.S. 741, 755-57 (1979) (declining to suppress evidence gathered in violation of IRS regulations); United States v. Long, 803 F. Supp. 1086, 1090-91 (D.S.C. 1992) (denying motion to suppress because investigators from the wrong agency of the United States government had gathered the evidence). Second, defendant has failed to show that the IRS agent in fact exceeded the broad investigative

¹The original motion sought such relief in the alternative. (R. 66 at 8.)

authority set forth in the statutes and regulations. Finally, the only specific evidence he cited as subject to exclusion was the agent's phone call with Jacqueline McGee. As I explained in my previous order, McGee initiated this contact, which in any event produced nothing of evidentiary value to the government. (R. 103 at 13-14.)

THEREFORE, IT IS ORDERED that the motion to exclude based on lack of authority to investigate (R. 66) is **DENIED**.

Dated at Milwaukee, Wisconsin, this 14th day of June, 2010.

/s Lynn Adelman

LYNN ADELMAN
District Judge